

1 GARY M. RESTAINO
United States Attorney
2 District of Arizona
TRACY VAN BUSKIRK
3 Arizona State Bar No. 022097
ALANNA R. KENNEDY
4 Arizona State Bar No. 034257
Assistant U.S. Attorneys
5 Two Renaissance Square
40 N. Central Ave., Ste. 1800
6 Phoenix, Arizona 85004
Telephone: 602-514-7500
7 Email: Tracy.Van.Buskirk@usdoj.gov
Email: Alanna.Kennedy@usdoj.gov
8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF ARIZONA

11 United States of America,
12
13 Plaintiff,

14 vs.

15 Preston Henry Tolth,
16
17 Defendant.

No. CR-23-08043-PCT-DLR

**GOVERNMENT'S NOTICE OF
INEXTRICABLY INTERTWINED
EVIDENCE**

18 The government respectfully provides notice of evidence of other acts that are direct
19 and inextricably intertwined evidence of the charges in the indictment, and additionally,
20 Rule 404(b) evidence.

21 Federal Rule of Evidence 404(b) is “an inclusionary rule,” and “evidence of other
22 crimes is inadmissible ... only when it proves nothing but the defendant’s criminal
23 propensities.” *United States v. Sneezer*, 983 F.2d 920, 924 (9th Cir. 1992).¹ Rule 404(b)
24 allows admission of other act evidence that is relevant to proving motive, opportunity,
25 intent, knowledge, identity, and absence of mistake, among other things. Fed. R. Evid.
26 404(b)(2); *United States v. Winters*, 729 F.2d 602, 604 (9th Cir. 1984).

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28 ¹ All internal citations and quotation marks are omitted throughout this filing.

1 Rule 404(b) is not implicated “where the evidence the government seeks to
2 introduce is directly related to, or inextricably intertwined with, the crime charged in the
3 indictment.” *United States v. Lillard*, 354 F.3d 850, 854 (9th Cir. 2003). There are two
4 types of evidence that are admissible without regard to Rule 404(b): (1) evidence that
5 “constitutes a part of the transaction that serves as the basis for the criminal charge”; and
6 (2) evidence that is necessary “to permit the prosecutor to offer a coherent and
7 comprehensible story regarding the commission of the crime.” *United States v. DeGeorge*,
8 380 F.3d 1203, 1220 (9th Cir. 2004). If other acts are relevant, the “only” conditions
9 justifying exclusion are those described in Rule 403. *United States v. Curtin*, 489 F.3d 935,
10 944 (9th Cir. 2007) (en banc).

11 Specifically, the government intends to elicit testimony regarding: (1) the events of
12 the evening preceding the crime, including a verbal and physical altercation that defendant
13 Preston Henry Tolth had with his father while they were traveling toward Sweetwater,
14 Arizona during the late-night hours of June 14, 2021; and (2) that following the harm Tolth
15 inflicted on E.B. on or about June 15, 2021, the victim, E.B., has not been seen or heard
16 from since.

17 1. Tolth’s Fight with His Father During the Drive from Farmington

18 In June 2021, Tolth was living with his father and his stepmother at their residence
19 near the Sweetwater Chapter House on the Navajo Nation. Tolth’s stepmother is the
20 victim’s sister. Tolth had only been living at the residence for a few weeks before the crime.
21 During that time, Tolth helped his father with small jobs around the community, which
22 included going to the victim’s house and her daughter’s house (next door). On June 14,
23 2021, Tolth rode with his father and stepmother to Farmington, New Mexico to run errands
24 and pick up supplies. They began to drive home at night. On the drive back, Tolth became
25 agitated and argumentative with his father. Tolth’s father stopped in Beclabito to buy gas,
26 where Tolth got out of the truck and confronted his father. Tolth and his father got back
27 into the truck and continued to drive towards home. While driving, Tolth’s father observed
28 Tolth drinking beer.

1 Tolth's father then stopped at a store in Red Mesa. Tolth got out of the truck again
2 and continued to act aggressively towards his father. Tolth's father attempted to leave Tolth
3 by driving away, but Tolth jumped into the truck-bed. Tolth's father then pulled to the side
4 of the road. When he got out, Tolth swung a piece of lumber at him. Tolth's father disarmed
5 Tolth and the two men engaged in a physical fight. Tolth's stepmother drove away leaving
6 both men behind. Tolth ran off into the darkness. Tolth's stepmother returned a short time
7 later. She picked up Tolth's father. Tolth was last seen walking southbound on Route 35
8 about one mile south of where he fought with his father.

9 Tolth described that he was picked up by an unknown motorist who gave him a ride.
10 During one interview, Tolth described that he was driven to Thoreau, New Mexico. In a
11 different interview, Tolth described being dropped off and walking to the victim's house.
12 Tolth also described that after contacting the victim, they got in her truck. Tolth said he
13 drove the truck. He admitted punching the victim several times. He described dropping the
14 victim off on the side of the road. Tolth said she was bleeding and stumbling when she got
15 out of the car, and he left her with approximately three people who were drinking. Tolth
16 then drove her truck to Thoreau.

17 Testimony about the events preceding the crime, including Tolth's fight with his
18 father, is necessary for the jury to have a complete and coherent understanding of Tolth's
19 activities in the hours leading up to the crime. *See Old Chief v. United States*, 519 U.S. 172,
20 187-89 (1997); *United States v. Dorsey*, 677 F.3d 944, 951 (9th Cir. 2012). This evidence
21 explains what Tolth was doing in this remote area of the Navajo Nation in the middle of
22 the night, why he did not want to return to his father's house, and why he needed to find a
23 vehicle. It helps prove his identity as the attacker, and his motive, knowledge, intent,
24 opportunity, and lack of mistake as to the charged crimes.

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants: Jane McClellan and James Rael, *Attorneys for Defendant.*

s/R. Jimenez
U.S. Attorney's Office